

Environmental Protection Agency

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information as adjusted under § 97.528 of this chapter.

(vi) The finalization of control period emissions data, including retroactive adjustment based on audit.

(vii) The approval or disapproval of a petition under § 97.535 of this chapter.

(15) Under subpart CCCCC of part 97 of this chapter,

(i) The decision on allocation of TR SO₂ Group 1 allowances under § 97.611(a)(2) and (b) of this chapter.

(ii) The decision on the transfer of TR SO₂ Group 1 allowances under § 97.623 of this chapter.

(iii) The decision on the deduction of TR SO₂ Group 1 allowances under §§ 97.624 and 97.625 of this chapter.

(iv) The correction of an error in an Allowance Management System account under § 97.627 of this chapter.

(v) The adjustment of information in a submission and the decision on the deduction and transfer of TR SO₂ Group 1 allowances based on the information as adjusted under § 97.628 of this chapter.

(vi) The finalization of control period emissions data, including retroactive adjustment based on audit.

(vii) The approval or disapproval of a petition under § 97.635 of this chapter.

(16) Under subpart DDDDD of part 97 of this chapter,

(i) The decision on allocation of TR SO₂ Group 2 allowances under § 97.711(a)(2) and (b) of this chapter.

(ii) The decision on the transfer of TR SO₂ Group 1 allowances under § 97.723 of this chapter.

(iii) The decision on the deduction of TR SO₂ Group 1 allowances under §§ 97.724 and 97.725 of this chapter.

(iv) The correction of an error in an Allowance Management System account under § 97.727 of this chapter.

(v) The adjustment of information in a submission and the decision on the deduction and transfer of TR SO₂ Group 1 allowances based on the information as adjusted under § 97.728 of this chapter.

(vi) The finalization of control period emissions data, including retroactive adjustment based on audit.

(vii) The approval or disapproval of a petition under § 97.735 of this chapter.

(17) Under subpart RR of part 98 of this chapter,

(i) A determination of eligibility for research and development exemption under § 98.440(d) of this chapter.

(ii) The approval or disapproval of a request for discontinuation of reporting under § 98.441(b) of this chapter.

(iii) The approval or disapproval of a geologic sequestration monitoring, reporting, and verification (MRV) plan under § 98.448(c) and § 98.448(d) of this chapter.

(c) In order to appeal a decision under paragraph (a) of this section, a person shall file a petition for administrative review with the Environmental Appeals Board under § 78.3. The Environmental Appeals Board will, consistent with § 78.6, either:

(1) Issue an order deciding the appeal; or

(2) Where there is a disputed issue of fact material to the contested portions of the decision, refer the proceeding to the Chief Administrative Law Judge, who will designate an Administrative Law Judge to conduct an evidentiary hearing to decide the disputed issue of fact. If the proposed decision is contested or the Environmental Appeals Board decides to review the proposed decision, the Environmental Appeals Board will issue an order deciding the appeal.

(d) Questions arising at any stage of a proceeding that are not addressed in this part will be resolved at the discretion of the Environmental Appeals Board or the Presiding Officer.

[58 FR 3760, Jan. 11, 1993, as amended at 60 FR 17132, Apr. 4, 1995; 62 FR 55488, Oct. 24, 1997; 66 FR 12978, Mar. 1, 2001; 69 FR 21644, Apr. 21, 2004; 70 FR 25338, May 12, 2005; 71 FR 25379, Apr. 28, 2006; 72 FR 59205, Oct. 19, 2007; 75 FR 75078, Dec. 1, 2010; 76 FR 48378, Aug. 8, 2011]

§ 78.2 General.

(a) *Definitions.* (1) The terms used in this subpart with regard to a decision of the Administrator that is appealed under this section shall have the meaning as set forth in the regulations under which the Administrator made such decision and as set forth in paragraph (a)(2) of this section.

(2) *Interested person* means, with regard to a decision of the Administrator:

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(i) Any person who submitted comments, or testified at a public hearing, pursuant to an opportunity for comment provided by the Administrator as part of the process of making such decision;

(ii) Who submitted objections pursuant to an opportunity for objections provided by the Administrator as part of the process of making such decision; or

(iii) Who submitted, to the Administrator and in a format prescribed by the Administrator, his or her name, service address, telephone number, and facsimile number and identified such decision in order to be placed on a list of persons interested in such decision;

(iv) Provided that the Administrator may update the list of interested persons from time to time by requesting additional written indication of continued interest from the persons listed and may delete from the list the name of any person failing to respond as requested.

(b) *Availability of information.* The availability to the public of information provided to, or otherwise obtained by, the Administrator under this subpart shall be governed by part 2 of this chapter.

(c) *Computation of time.* (1) In computing any period of time prescribed or allowed under this part, except as otherwise provided, the day of the event from which the period begins to run shall not be included, and Saturdays, Sundays, and federal holidays shall be included. When the period ends on a Saturday, Sunday, or federal holiday, the stated period shall be extended to include the next business day.

(2) Where a document is served by first class mail or commercial delivery service, but not by overnight or same-day delivery, 5 days shall be added to the time prescribed or allowed under this part for the filing of a responsive document or for otherwise responding.

[76 FR 48379, Aug. 8, 2011]

§ 78.3 Petition for administrative review and request for evidentiary hearing.

(a)(1) The following persons may petition for administrative review of a decision of the Administrator that is made under parts 72, 74, 75, 76, and 77 of

this chapter and that is appealable under § 78.1(a) of this part:

(i) The designated representative for the unit covered by the decision;

(ii) The authorized account representative for an account covered by the decision; and

(iii) Any interested person with regard to the decision.

(2) The following persons may petition for administrative review of a decision of the Administrator that is made under part 73 of this chapter and that is appealable under § 78.1(a):

(i) The authorized account representative for any Allowance Tracking System account covered by the decision; and

(ii) With regard to the decision on the allocation of allowances from the Conservation and Renewable Energy Reserve, the certifying official whose application is covered by the decision.

(3) The following persons may petition for administrative review of a decision of the Administrator that is made under part 97 of this chapter and that is appealable under § 78.1(a) of this part:

(i) The NO_x authorized account representative for the unit or any NO_x Allowance Tracking System account covered by the decision; or

(ii) Any interested person with regard to the decision.

(4) The following persons may petition for administrative review of a decision of the Administrator that is made under subparts AA through II of part 96 of this chapter and that is appealable under § 78.1(a):

(i) The CAIR designated representative for a unit or source, or the CAIR authorized account representative for any CAIR NO_x Allowance Tracking System account, covered by the decision; or

(ii) Any interested person with regard to the decision.

(5) The following persons may petition for administrative review of a decision of the Administrator that is made under subparts AAA through III of part 96 of this chapter and that is appealable under § 78.1(a):

(i) The CAIR designated representative for a unit or source, or the CAIR authorized account representative for